

The Administrative Law Judge denied claimant benefits, finding that claimant's testimony at deposition contradicted his testimony at the preliminary hearing regarding the

notice of accident ostensibly given to respondent. The Administrative Law Judge went on to find claimant's credibility lacking.

In this instance, whether claimant provided notice to respondent hinges upon the Administrative Law Judge's willingness to accept claimant's story over that of Dennis Forshee, the owner of respondent Forshee Paint Company. The Administrative Law Judge had the opportunity to view both claimant and Mr. Forshee during the preliminary hearing. The claimant's testimony at preliminary hearing contradicted the claimant's testimony at his discovery deposition of August 28, 1998, even though the September 1, 1998, preliminary hearing occurred only four days after the deposition. The claimant gave conflicting testimony regarding if and when he discussed his injury with Mr. Forshee, how many times he discussed the incident with Mr. Forshee, how the actual accident occurred, and for how long afterwards he felt pain.

When an administrative law judge has the opportunity to view the testimony of witnesses in person, some deference should be given to the administrative law judge's conclusions due to his unique opportunity to assess the credibility of the witnesses. In this instance, the Administrative Law Judge found claimant's credibility to be lacking, and the Appeals Board is not inclined, after reviewing the testimony, to alter that decision. The Appeals Board, therefore, finds that the Order by the Administrative Law Judge, denying claimant benefits for failing to provide notice of accident to respondent in a timely fashion, should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bruce E. Moore dated September 10, 1998, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 1998.

BOARD MEMBER

c: Gerard C. Scott, Wichita, KS
Kurt W. Ratzlaff, Wichita, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director